

**Draft MINUTES**  
**ESHB 1397 RULE ADVISORY COMMITTEE**  
**September 13, 2005**

**Attendance**

Advisory Committee: Sarah Rees, Bob Saunders, Brett Rude, John Raymond (Department of Ecology); Dave Kircher (Puget Sound Clean Air Agency); Eric Anderson, Katherine Vasquez, William Wright, Thalia Brown, Dale Brown (Department of Licensing); John Cabaniss (Assn. of International Auto Manufacturers); Bryan Imai (WA Auto Dealers Assn.); John Creedon (SW WA Auto Dealers Assn.); Janet Ray (AAA Washington). Chris Marr (Spokane Auto Dealer) joined the meeting via tele-conference and T.K. Bentler substituted for Theresa Gamble (WA State Independent Auto Dealers Assn.). Additional attendees: Forest Hillyard (ASA-Washington) and Richard Rodger (Senate Committee on Water, Energy and the Environment).

Absent: Bob Bridge (Puget Sound Auto Dealers Assn.); Steve Douglas (Alliance of Auto Manufacturers); K.C. Golden (Climate Solutions); Carrie Nyssen (American Lung Assn.-WA); and Robert Pregulman (WASHPIRG).

**Oregon clean car effort:** Bob Saunders provided an update on Oregon's clean car effort. Oregon DEQ expects to conclude their effort and report to the Governor by the end of October. Oregon's Environmental Quality Commission expects to adopt an emergency rule in December which would be signed by the Governor by the end of 2005. Oregon then expects to begin the permanent rule process in 2006.

A committee member asked what Ecology expected would happen with the rule effort if Oregon did not adopt their emergency rule by the end of 2005. Bob explained that Ecology would either wait until Oregon had concluded their rule making or that Ecology would conclude its' rule making effort recognizing the need to reopen and amend the rule in order to satisfy the applicability intent of ESHB 1397.

**August 16, 2005 advisory committee minutes:** Minutes of the August 16, 2005 advisory committee meeting were distributed. Discussion of changes to WAC 173-423 followed.

**Review draft rule:** Bob Saunders led the committee through a section-by-section review and discussion of changes to the draft rule. Below are the discussion highlights focusing on the committee member's concerns and recommendations.

Bob began the discussion with a review of several handouts that capture Ecology's approach for assessing compliance. In summary, these include:

1. Dealer Inspections: The regulation establishes Ecology's authority to conduct inspections of dealers' records and for dealers to provide, upon request, specific purchase and sale documents in order to see if there is evidence of non-compliance.

2. Eliminate “mileage factories”: The regulation requires dealers, when registering a vehicle, to provide the licensing agent with the odometer statement that they acquired at the time of purchasing the vehicle. This approach addresses artificial inflation of mileage when registering non-compliant vehicles.
3. Special Reports: Ecology will use manufacturer and DOL reports to help identify patterns of non-compliance. The regulation requires manufacturers to provide Ecology, upon request, with the VIN numbers of federal vehicles delivered to Washington dealers. The manufacturer and DOL reports could be used to identify who may be responsible for increases in:
  - a. Federal vehicles delivered to WA
  - b. Vehicles exempted from the standards e.g: inheritance, wrecked out of state
  - c. Previously registered vehicles just over the 7,500 mile line.
4. Under the hood checks: Ecology and/or DOL will establish a system for checking under the hoods to verify the emission certification of vehicles previously registered out of state. Franchise auto dealers have indicated a willingness to do this. Decisions on who can do this have not been made.

**Committee members raised the following questions/concerns:**

1. *Regarding DOL reports, does Ecology expect that DOL will be involved with monitoring, or “policing” compliance?* Bob explained that it’s difficult to determine Ecology’s and DOL’s respective levels of involvement at this time but that assessing compliance is expected to involve both agencies.
2. *Does Ecology expect problems with non-compliance?* Several committee members responded by identifying a variety of loopholes mainly associated with the sale of previously registered vehicles with less than 7500 miles. Bob explained some of the challenges that other states have faced and that Ecology’s approach provides a way to monitor and detect similar non-compliance in Washington.
3. *Regarding transfer of a previously registered federal vehicle titled to two individuals, will a death certificate be required to transfer title to one of the parties?* Bob explained that Ecology would further consider this situation and that there were probably similar additional special circumstances that will arise. Ecology will continue to work with DOL to “fine-tune” implementation.

Bob then described a new provision, the details of which were provided committee members prior to the meeting. The provision addresses the sale of previously registered vehicles with less than 7500 miles.

The new provision requires dealers to provide the licensing agent with the odometer statement they obtained at the time they acquired a vehicle with less than 7500 miles. Bob explained that this provision will likely be added to exemption number three.

**Committee members raised the following questions/concerns:**

1. *Will under-the-hood checks be required for vehicles previously registered in other states that require California certification when these vehicles are licensed in Washington?* Ecology agreed to further consider this issue when laying out implementation guidelines with DOL.
2. *How much will all of this extra effort cost (Ecology, DOL, manufacturers, dealers, consumers)?* Bob explained that answering this question is part of the rule making process. Ecology will conduct and submit an economic analysis that will consider the costs and benefits associated with the rule. A committee member pointed out that the analysis should recognize that the rule is required by legislation and is not simply a new Ecology rule.
3. A committee member expressed concern regarding low mileage (<7500 miles), previously owned, non-certified vehicles taken in by a dealer on trade. Knowing that they will have to wholesale the vehicle for out of state registration, a dealer will likely assign a lower trade-in value than they would have otherwise. In the end, the consumer will be impacted the most financially.

The committee recognized this may be more of an early implementation, transitional issue than a longer-term impact. Dealers may come by these vehicles primarily from two sources – auctions and private party trades. Through effective education and outreach, dealers and consumers will be prepared to make well informed decisions about such transactions and alternatives that better fit their financial situation. Ultimately, the committee agreed there was no compelling reason to accommodate such transactions.

**Section-by section review of changes/concerns:**

173-423-020 Applicability. See discussion below re: effective date.

173-423-025 Effective date. One committee member suggested that ESHB 1397 does not link an effective date with the State of Oregon adopting California emission standards. They suggested that the link to Oregon may more appropriately be covered in 173-423-020 Applicability.

Ecology agreed to further consider the language in both sections – as they reflect the intent of ESHB 1397.

173-423-040 Definitions and abbreviations. A member pointed out that the NMOG fleet average emission definition should include light duty trucks.

Ecology agreed to add the term light duty trucks to the NMOG fleet average emission definition.

173-423-060 Exemptions. Bob reviewed the proposed changes to exemption number seven. After considerable discussion, the committee agreed with deleting exemption seven entirely. The group agreed that a) the number of consumers needing such an exemption is likely to be quite small, b) the exemption is outdated in terms of the current availability of 50-state vehicles in other states, and that c) consumers will likely have the option to purchase a 50-state car or a car with more than 7500 miles.

Ecology agreed to remove the exemption and further consider with DOL the need for accommodating such situations in guidance or DOL rules.

173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference. A committee member pointed out that Title 13 CCR section 1960.1 establishes standards and test procedures for 1981 through 2006 model passenger car, light duty trucks and medium duty vehicles and questioned the need for Ecology to adopt it by reference.

Ecology agreed to review the need for adopting the provision.

173-423-080 Fleet average non-methane organic gas (NMOG) exhaust emission requirements, reporting and compliance. A committee member suggested the need for clarifying portions of this provision. As it stands, sub-section 3(a) can be interpreted to mean that manufacturers must report on 2008 model year NMOG values – which they would not have and is not the intent of this provision.

Ecology agreed to consider rephrasing or re-ordering the requirement.

173-423-100 Manufacturer delivery reporting requirements. Regarding sub-section (2), a committee member pointed out that Ecology needs the required information prior to the beginning of the 2009 model year in order to establish a process with licensing agents.

Ecology agreed to explore the matter with manufacturers, CARB and EPA.

173-423-130 Surveillance. Regarding sub-section (2), the committee further discussed the anticipated benefits of this provision. In the end the committee generally agreed that the benefits are unlikely to be very significant or revealing – in terms of compliance or education.

Ecology agreed with removing the provision in light of other compliance mechanisms now included.

Regarding sub-section (3), a committee member questioned whether this provision will require dealers to produce or retain any documents beyond that which they are already required to have and retain.

Bob explained that this provision does not require dealers to produce or retain any documents that they are not already expected to produce and retain.

**Verification of California certified vehicles:** Bob opened discussion regarding the process for verifying California certified vehicles.

The committee agrees that for the majority of new vehicle registrations, licensing agents will be able to ensure the vehicles comply with California emission standards via the Manufacturer's Statement of Origin (MSO) provided by the dealer for initial titling and registration.

The most likely compliance problem will be vehicles with less than 7500 miles previously registered out of state. According to the DOL, [in 2004?] there were 11,000 vehicles previously registered out of state with less than 7500 miles. These vehicles will not normally have an MSO to verify California certification and are likely to be sold by franchise dealers.

Private parties or independent car dealers are expected to only rarely sell such vehicles, and those previously registered in Washington will likely have had MSO verification at the initial registration.

After considerable discussion, the committee concluded there are three specific scenarios that will require verification of California certification – or, under-the-hood checks. They are previously registered out of state vehicles with less than 7500 miles that a

1. Washington state resident has acquired and wishes to register.
2. Independent auto dealer has acquired and wishes to sell to a Washington resident.
3. Franchise dealer has acquired and wishes to sell to a Washington resident.

**Bob asked the committee to consider how licensing agents will verify that non-MSO vehicles are California-certified?** In some cases there may be other manufacturer documents such as the factory invoice to establish California certification.

If not, Bob explained that these vehicles must be physically inspected by an authorized party to determine if they are California certified and the written inspection results must be provided to the licensing agent. From Ecology's perspective, the best case would be that an independent third party always conducts these inspections.

The committee discussed numerous possibilities at length. Some parties that could be authorized to provide this certification were:

- independent, licensed and bonded vehicle verifiers, such as they have in California
- auto repair businesses
- independent auto dealers
- franchise auto dealers
- licensing agents
- public servant organizations such as police or firefighter guilds

In the end, the committee concluded the discussion with the following points:

- Ecology and DOL will need to consider whether a formal program is needed or whether the program can be administrative in nature.
- Ecology and DOL will need to explore whether either agency has authority to establish a formal program.
- Certification authorization need not be limited to one individual group. It could be available to one, several groups or open for application by any party.
- The auto repair industry, independent auto dealers and franchise dealers are all interesting in conducting certifications
- Some licensing agents and some public servant organizations may be willing to conduct certifications.
- The licensing process should not be “interrupted” or “slowed” at a dealership by a third party in order to have a vehicle certified.

Bob closed the meeting by explaining that Ecology and DOL would need to further discuss and investigate each of these points in order to begin developing the broader implementation plan.